MINUTES
of the
FIFTH MEETING
of the
RADIOACTIVE AND HAZARDOUS MATERIALS COMMITTEE
November 12-13, 2009
Room 321, State Capitol
Santa Fe

The fifth meeting of the Radioactive and Hazardous Materials Committee was called to order by Senator Richard C. Martinez, chair, at 8:45 a.m. on Thursday, November 12, 2009, in Room 321of the State Capitol.

Present
Sen. Richard C. Martinez, Chair
Rep. John A. Heaton, Vice Chair
Sen. Stephen H. Fischmann
Rep. William J. Gray
Sen. Carroll H. Leavell
Rep. Antonio Lujan
Rep. Jeff Steinborn
Rep. Jim R. Trujillo
Rep. Jeannette O. Wallace

Absent
Sen. Vernon D. Asbill
Sen. John Pinto
Sen. David Ulibarri

Advisory Members
Sen. Rod Adair
Rep. Eliseo Lee Alcon (November 12)
Sen. Lynda M. Lovejoy (November 12)
Sen. William H. Payne
Rep. Nick L. Salazar
Rep. Thomas A. Anderson
Rep. Donald E. Bratton
Sen. Dianna J. Duran
Sen. Gay G. Kernan
Rep. Rodolpho "Rudy" S. Martinez

(Attendance dates are noted for members not present for the entire meeting.)

Staff
Gordon Meeks
Mark Harben

Thursday, November 12

Potential Impacts of Climate Change on New Mexico

Patrick McCarthy, director of the Southwest Climate Change Initiative of the Nature Conservancy, told the committee that the nature conservancy works around the world to protect ecologically important lands and water for nature and people. He said that global climate change

is real; it is already happening; it is caused by processes that are understood; and New Mexico's climate is already changing. He explained some basic science about the greenhouse effect on the temperature of the earth. He said that since about 1750, human activities have amplified the natural greenhouse effect by more than doubling the concentration of heat-trapping gases in the atmosphere. Atmospheric carbon dioxide concentration is now at its highest level in 650,000 years, he testified; and that level has risen rapidly since the beginning of the Industrial Revolution (roughly 250 years ago). Other effects include changes in the timing of the seasons, rises in the sea level, increases in the severity and frequency of various types of storms, more frequent extreme weather such as droughts and floods, rises in global average air and ocean temperatures and widespread melting of snow and ice. Data gathered from hundreds of weather stations across New Mexico show that virtually all of New Mexico is warmer than the baseline and the southwest is warming faster than any other part of the lower 48 states.

During the five-year reference period, 2000-2005, several areas stand out, like the Jemez Mountains and the Bootheel. Mean annual temperatures were about nine degrees Fahrenheit warmer. Ninety-five percent of New Mexico has experienced mean temperature increases. The five-year drought period, he said, shows that more than 75 percent of the state was drier. These trends in temperature and precipitation act together to cause water loss more quickly when the weather is warm. Moisture deficit is a broad indicator of environmental stress. New Mexico's watersheds have experienced increasing moisture stress during 1970-2006. The Jemez Mountains is a spot on the map where there has been a large increase in mean temperatures and is the epicenter of an insect- and drought-induced forest dieback affecting two million acres, including much of Santa Fe. This landscape has crossed a threshold, he said, which is likely to transform the landscape permanently. Simulations for 2080-2099 indicate that a day so hot that it currently happens once every 20 years would occur every other year or more frequently by the end of the century if trends continue. Institutions and infrastructure need to be redesigned so that they can handle environmental and economic shocks that arrive more frequently and with greater severity, he testified. Snowpack in mountain ranges has declined over the past two decades, and the timing of peak stream flow is on average a week earlier than it was in the mid-twentieth century. Water flows that used to reach reservoirs, cities and towns may no longer reach those destinations or may provide less ground water recharge, thus affecting cold-water fish and making delivery of water to farms more challenging and increasing the frequency of large, severe wildfires. Climate change is already putting New Mexico's water supplies, forests and grasslands at risk, and New Mexico's economy stands to lose up to $3.2 billion annually from decreased revenues and increased costs.

The committee discussed:

- the tipping point, beyond which little can be done to repair the damage;
- international treaty negotiations in Copenhagen;
- the U.S. contribution to greenhouse gases compared to the rest of the world;
- 20 percent of greenhouse gases is from forest destruction around the world;
- what the New Mexico Legislature can do;

- impreciseness of modeling data and comparison of predictive models based on solar flares and volcanic activity;
- accuracy of models to predict the effects of the damage that has already been done;
- potential multiple causes;
- U.S. global change research program;
- causes of extremes in cycles over past 650,000 years;
- Los Alamos National Laboratory research on historic long-term variations in dust bowls;
- ocean acidification related to carbon dioxide concentrations (coral reef and diatom declines); and
- peer-reviewed studies from opposing opinions.

Alan Hamilton, conservation director of the New Mexico Wildlife Federation, described the history and membership of the federation. He told the committee that New Mexico drought, habitat fragmentation, invasive species and the growing demands for water resources have already degraded wildlife habitat considerably and that climate change exacerbates these problems by weakening and further reducing the resiliency of natural systems. As the temperature increases, the amount and pattern of precipitation will continue to change, affecting the frequency and intensity of weather events, the distribution and duration of drought, the number and intensity of major wildfires, the timing of runoff and flooding and the timing of animal and plant life cycles. He said that the southwest has been hard hit by a drought that has devastated some of its most beautiful forests and wildlife. These losses have come from both the worst wildfires in history and from pine beetle infestation. He said that recent wildfires in the southwest are most likely the result of global warming, the nine years between 1997 and 2005 being the warmest on record. The same period fueled an outbreak of pine beetles throughout the Rocky Mountains. He said the risk to ponderosa pine forests is especially concerning, as these forests are critical to some of the most treasured game species including deer, elk, turkey, grouse and bear. He testified that trout are especially vulnerable to global warming because they are dependent on an abundance of clear, cold water. As the temperatures in trout streams continue to rise, there will be negative impacts on all life phases of these fish. The burning of fossil fuels is partially responsible for greenhouse gases. Another byproduct from the burning of fossil fuels is mercury, one of the most prevalent toxins found in fish. It is no longer safe to indiscriminately consume fish in New Mexico, he said; it is critical to begin reducing the amounts of carbon dioxide and mercury that are being released into the atmosphere and into the environment. He called for action by the state to mitigate the effects of global warming, referring to the "Comprehensive Wildlife Conservation Strategy for New Mexico" of the Department of Game and Fish; the Department of Environment's (NMED) River Ecosystem Restoration Initiative that the legislature enacted in 2007; the State and Tribal Wildlife Grants program; and the federal Land and Water Conservation Fund, which requires a state match.

The committee discussed:

- the state's ability to clean up or regulate mercury contamination;

- a state-funded river ecosystem restoration program;
- conversations with coal-fired power generation plants; and
- the consent decree affecting the San Juan Generating Station.

Federal/State Greenhouse Gas Emissions Issues and Climate Change Legislation

Malik Roy, Pew Center on Global Climate Change, told the committee that the Public Service Company of New Mexico (PNM) is one of the founding members of the U.S. Climate Action Partnership. He said that the three goals of current national energy policy are economic growth, national security and addressing climate change. There is no silver bullet to accomplish any of these goals, he said. He said cap-and-trade legislation would be a key component to reducing emissions by 2050. Cap-and-trade legislation allows emitters to sell emissions rights at a profit while investing in emissions-reduction technology not prescribed by the Environmental Protection Agency (EPA). Mr. Roy briefed the committee on the status of Senator Jeff Bingaman's bill, which has been reported out of committee.

Jeannette Pablo, director of federal affairs and senior climate advisor for PNM, and Jeff Burks, director of sustainability and climate strategies for Energy Strategies, told the committee that they support national legislation, rather than local legislation, on greenhouse gases. PNM plans to comment on the proposed rulemaking changes related to climate issues, scheduled on the Public Regulation Commission (PRC) docket. States have been considering climate change policies in lieu of federal action, but now Congress is stepping up to the plate, and the state should wait to see what federal policy will turn out to be before enacting state legislation, Ms. Pablo and Mr Burks recommended. They said that the nation can no longer afford to have a stalemate on this issue, but neither can the economy bear conflicting or inconsistent state and federal policies. They testified that states will have a role to play in greenhouse gas emissions control but not cap-and-trade law or "new economies" initiatives. They said that the states and federal government need to work in tandem based on their respective strengths. This is reflected in the NMED's withdrawal of its cap-and-trade proposals before the Environmental Improvement Board (EIB).

The committee discussed:

- Chicago Climate Exchange;
- transition of policy lead from local and state to federal;
- concerns about cap-and-trade policy based on the European experience with overallocated emissions allowances;
- use of sulphur dioxide and acid rain cap-and-trade programs as a model for greenhouse gas cap-and-trade models;
- political benefit to state leadership in renewable energy policies;
- investment in efficient greenhouse gas controls;
- economic opportunities in renewable energy;
- net decrease in greenhouse gases by replacing coal-fired power plants with nuclear power plants;

- whether 80 percent reduction is possible or desirable;
- debate over legitimacy of climate change caused by carbon dioxide emissions by humans;
- less expensive technologies to reduce carbon dioxide in the atmosphere;
- regulatory hurdles to reduce carbon dioxide emissions through conversion to nuclear energy based on political reasons compared to technical reasons;
- new business models based on national security and economic development benefits to emphasize energy efficiency and energy independence;
- costs to consumer as an equal factor;
- "Is cap and trade really going to get us to improve the way we generate electric power?";
- argument against taxes as policy options; and
- cost recovery under cap-and-trade policies.

Potential Economic Costs of Climate Change to New Mexico

Janie M. Chermak Ph.D., professor of economics at the University of New Mexico (UNM), and Kristine Grimsrud, Ph.D., assistant professor of economics at UNM, told the committee that climate modeling indicates that the average global surface temperature could rise by more than five degrees Celsius (nine degrees Fahrenheit) above pre-industrial levels by the end of this century. During the twentieth century, the temperature rose 0.74 degrees Celsius (1.33 degrees Fahrenheit), mostly in the past three decades. Economic costs would arise from changes in climate and ecosystems, Dr. Chermak and Dr. Grimsrud said. Higher temperatures would increase the incidence of heat-related health problems, for example. This would cause economic costs to New Mexico's families, businesses and communities. By 2020, 19 different cost categories could total $3.2 billion per year. They include wildland fire costs ($490 million per year), health-related costs ($421 million per year) and recreation costs ($286 million). Additionally, the continuation of activities that contribute to climate change could cost New Mexicans almost $1.3 billion per year in missed opportunities to implement energy efficiency programs and about $275 million per year in health costs related to the burning of coal. The combined total annual costs increase sixfold by 2080. If spread evenly, New Mexico's households, on average, could incur annual costs of $3,430 per year by 2020. Of this amount, $1,650 relates to energy-related expenditures, $740 relates to health-related costs and $520 relates to wildland fire costs. The 2020 average of $3,430 represents more than eight percent of the current median household income in New Mexico. Potential costs in 2040 represent more than 13 percent of median household income, and those in 2080 more than 29 percent of the income that half of the households in New Mexico earn in a year.

The committee discussed:

- how to calculate tradeoffs such as loss of trees that may be offset by increased water yield in underground aquifers;
- bases for predictions, assumptions and avoidance of other factors that might offset the assumed costs;

- how to use this information;
- it is a matter of magnitude, not to put too much emphasis on any specific numbers;
- lack of validation of economic predictions; and
- simple investment analysis advantage over complex predictive models.

Regional and State Proposed Global Warming Solutions

Franz Litz, World Resources Institute, and Jim Norton and Sandra Ely, both with the NMED, proposed to the committee a bill they said would help prepare New Mexico for federal climate change policies. Referring to Governor Bill Richardson's leadership on clean energy and green jobs, they said the proposal does not set an emissions cap. The bill was described as neither requiring industry to reduce emissions nor establishing an allowance auction. The bill would enable the NMED to assist businesses in preparing for future climate change policy. They said the bill directs the EIB to establish an emissions offset program, which would issue offset allowances to a project in New Mexico that is determined to reduce or avoid greenhouse gas emissions not otherwise required by law. Offsets are generally allowed in sources that are not subject to the cap in cap-and-trade programs, and the bill would then allow entities outside the capped sector to participate and reduce emissions, such as dairy-generated methane and landfill gas. These allowances could then be sold on the market and purchased by sources that are obligated to reduce emissions. Offsets will provide for cost-effective emission reductions, keeping costs of allowances down because these emission reductions would be cheaper than from sources under a regulatory cap.

The bill would also direct the EIB to establish a program for early emission reductions. Early reduction allowances are issued to a source for greenhouse gas emissions reductions that occur before the date required by law. For example, if PNM chooses to burn less coal by preheating one or more units at the San Juan Generating Station with geothermal heat, PNM could register emission reductions with the state in anticipation of receiving credit for the reductions under an established cap-and-trade program, explained Ms. Ely. She said that the offset and the early reduction programs would be voluntary. She also said that there is no guarantee that a federal program will recognize allowances awarded for these programs. Finally, she said the draft bill also requires entities to report greenhouse gas emissions.

Louis W. Rose, attorney with Montgomery and Andrews, described himself as the lone "voice of reason" on the panel. He said he spent 16 years at the NMED and 17 years practicing law, representing corporate clients. Since 1976, he has appeared before the EIB in these capacities. He told the committee that industry prefers a national policy on this issue. He said there is not a lot of agreement within the industry on what the federal policy should be, but there is uniform agreement that it should be a federal, not a state, policy. He said it is a global issue, not local or regional. He said that "we" do not want a competitive disadvantage to New Mexico business. That would be catastrophic, he said. It is absolutely necessary, he said, for this issue to be a national initiative. The existing infrastructure in New Mexico is inadequate to address national and global policy issues. The EIB is ill-equipped, he said, to make these kinds of policy decisions. Existing law does not allow the EIB to do this. The EIB thinks its authority to adopt

air quality rules is enough to restrict carbon emissions. That should be the legislature's responsibility to make specific policy like that. The PRC, the Energy, Minerals and Natural Resources Department (EMNRD) and others should also be a part of a unified approach. He told the committee that his clients have a rulemaking request before the EIB scheduled for next May and that this proposal is premature and the wrong way to go.

The committee discussed:

- what a unified policy would look like;
- the bill's delegation of legislative authority;
- the relationship of the bill's content to the state budget and a study of the bill's impact on the economy;
- an economic study of the pit rule;
- a study performed before the EIB's rule on clean cars;
- too many rules;
- a statement that the EIB is moving forward on rulemaking without legislative authorization anyway;
- the rationale for the regulatory threshold of 10,000 tons of carbon dioxide emissions;
- why reporting rules and permitting rules differ on thresholds;
- how allowances would be determined and how they would be measured;
- the burden on and capability of the agency to administer rules as a factor in setting thresholds;
- how transactions of allowances would take place;
- valuation of allowances without federal cap-and-trade legislation;
- partnership with Canadian provinces and Mexico states;
- what might be specific actions in response to information on imported energy generated by carbon emissions outside New Mexico;
- the need for fiscal efficiency;
- too broad, too little revenue to implement and the burden on industry;
- need to be tied to the northeast regional cap-and-trade program;
- legislative delegation of authority;
- opposition to mandatory reporting;
- example of the continuing assault on the dairy industry by the NMED;
- the assumption that the federal bills will be enacted;
- whether New Mexico can be more stringent than federal law;
- the number of full-time employees of the Western Climate Initiative;
- the number of members of the EIB and their qualifications;
- leveling the playing field for electric and petroleum refining industries;
- cost of the bill to refineries and their customers;
- interstate commerce clause implications;
- getting credit under pending federal legislation for offsets and allowances that predate related legislation;
- New Energy Economy petition before the EIB;

- number of Western Climate Initiative states that have considered legislation to regulate greenhouse gases;
- scope of the problem; and
- the need for nuclear in the title in order to get the votes to pass the federal bill.

The committee approved the September and October minutes.

Perspectives on Climate Change

Laura E. Sanchez, attorney in the Air and Energy Program, Natural Resources Defense Council (NRDC), thanked the committee for holding the hearing. She said that the NRDC has 1.3 million members and online activists and more than 350 lawyers, scientists and other professionals around the United States. She said that New Mexico has 14,534 members and online activists. The NRDC is a member of the Coalition for Clean Affordable Energy (CCAE), which is a coalition of 14 or so energy, consumer, environmental and health advocacy organizations dedicated to promoting energy efficiency and renewable energy. The CCAE works to educate the public about clean energy and works with policymakers to develop and implement policies that will allow New Mexico to take advantage of all the clean energy resources available to it. The NRDC works on climate change and energy issues at the international, national, regional, state and local levels. As the committee was told this morning, PNM Resources is a member of the U.S. Climate Action Partnership (USCAP). The NRDC is also a member and advocates the following approach, Ms. Sanchez told the committee: limits on greenhouse gas emissions; investing in green jobs and clean energy development; development of more fuel efficient cars and renewable fuels; creating green homes and buildings; building smarter communities; and supporting better public transportation solutions. Energy efficiency investments provide the best opportunities to foster renewable energy, economic development and savings on costs and of jobs.

Brittany Benko, environmental manager for BP America, told the committee that BP has a long history in the U.S. energy market as the largest oil and gas producer in the United States, and the company has the most diverse energy portfolio in the industry. She said that BP is the third-largest operator in New Mexico and employs more than 140 full-time employees and operates more than 2,200 wells, 1,000 compressors and 400 miles of pipeline, primarily in the San Juan Basin. In addition, she said, BP energy is the largest marketer of natural gas in New Mexico. Ms. Benko explained that BP contributes about $60 million per year in state and local taxes. Community investments include a $750,000 contribution to San Juan College to develop advanced computer simulations of well site equipment for improved natural gas field technician training and work force development. BP has also awarded $1.5 million to New Mexico educators who teach energy education to New Mexico schoolchildren through the A+ for Energy program. BP is an advocate of global solutions to find the most cost-effective ways to reduce greenhouse gas emissions in balance with economic development and energy security. BP supports national climate change legislation in lieu of state and local efforts, she testified. Uncoordinated state and local actions run the risk of both raising the overall cost of reductions and failing to weigh competing energy policy goals. She then summarized BP's corporate

greenhouse gas reduction initiatives and the company's progress in achieving them. As a local example, BP reduced emissions from the Farmington operations by 41 percent from a 2001 baseline. She said that BP met with the NMED to share greenhouse gas emission inventory methods, technologies and practices. Generally, BP believes that local and regional approaches are the best way to tackle environmental challenges due to distinct geologies, geographies and unique local considerations. However, the reduction of greenhouse gas emissions, unlike the other environmental issues mentioned, is a global issue, and climate change will require a global solution. The reductions made at the Farmington operations not only made sense for BP's U.S. gas business but also made sense for BP and represented the best "bang for the buck" reductions for the company. National governments should create action plans appropriate for their national circumstances that can be aligned and integrated over time within the framework of the United Nations Framework Convention on Climate Change. Natural gas can be a key factor in enabling the transition to a lower carbon future while minimizing cost and providing for energy security. Electricity generation is the largest single source of carbon dioxide emissions, accounting for 41 percent of all such emissions. Natural gas-fired power generation produces approximately half the emissions of conventional coal-fired power on a kilowatt-per-hour basis. Natural gas produces less sulfur dioxide, nitrogen oxide and particulate matter and no mercury or waste ash, and natural gas requires less water.

Thom Little, environmental relations manager for Intel, told the committee that Intel believes that climate change is not only an environmental issue but also an important societal challenge that warrants a serious policy response. Intel's contribution to meeting this challenge includes both policy and operational elements. Intel supports re-engagement of the U.S. government in the international climate policymaking process to ensure both effectiveness in dealing with the environmental challenge of climate change and the protection of key economic interests. Additionally, Intel supports enactment of a mandatory federal climate change program that includes key flexibility features and preempts state action. Key flexibility features include a workable cap-and-trade program, reliance on the "basket of gases" concept and recognition of voluntary industry reductions and credit for early action. Intel's position on sub-national initiatives is that they must be compatible with a federal market.

Intel committed itself to reduce its total greenhouse gas emissions by 20 percent by 2012, and the corporation has a long-standing proactive policy on the environment. Since 2000, Intel has reduced per fluorinated compound (PFC) emissions by 56 percent in absolute terms and 80 percent normalized by production volume. He said that the company chairs the International Climate Change Partnership, a progressive industry coalition working with governments to develop workable climate policies. Intel, he testified, is committed to being the trusted source of energy-efficient performance technology and is designing and building energy efficiency into every product. The company has incorporated Design for Environment principles, already achieving significant reductions in per product energy consumption while continuing to increase performance and production. The use of Intel products consumes more energy than does manufacturing those products, said Mr. Little. Intel's U.S. energy bill is approximately $225 million, $200 million of which is spent on electricity. Intel has implemented more than 250

energy conservation projects, saving more than 500 million kilowatt-hours of electricity in its facilities. Intel has agreed to purchase 1.3 billion kilowatts per year of renewable energy certificates, resulting in 50 percent of the consumed U.S. energy coming from renewable sources, he said. This made Intel the number one purchaser of green power in the United States.

Intel is engaged with the EPA and the European Commission (EC) to develop new Energy Star specifications for computers, servers, and data centers. It is also working with the EC to develop personal computing standards under the EU Directive on Eco-Design on Energy-Using Products. He told the committee that Intel Capital, the company's venture capital arm, invests in a variety of green industries to accelerate innovation in startup companies that develop alternative power sources, including companies that will manufacture and supply photovoltaic cells to solar module makers. Intel, Google and the World Wildlife Fund jointly launched the Climate Savers Computing Initiative, the goal of which is to reduce computer-related carbon dioxide emissions by 50 percent by 2010. Intel is also a co-founder of The Green Grid, a global consortium dedicated advancing the energy efficiency in data centers. Intel's experience validates that investments in energy efficiency often create positive economic returns independent of their effect on climate emissions. "Smart" public policies are needed, he said, that enable, encourage and expand the energy, environmental and economic role of information and communications technologies (ICT). Studies have fleshed out the contribution that ICT can make to improve energy efficiency and reduce climate emissions. ICT could reduce U.S. climate emissions by 22 percent by 2020. Intel is leading the way in trying to close the policy gap. Intel has joined with technology leaders and nongovernmental organizations to form the Digital Energy Solutions Campaign (DESC). The DESC's mission is to expand policymakers' understanding of how ICT can improve the energy efficiency of the broader economy. ICT solutions are the full suite of hardware, software and broadband technologies that can increase the energy efficiency of society.

The committee discussed:

- economic advantages to energy efficiency;
- establishing a set point for earth's temperature;
- science intelligence;
- an alternative solution to global warming;
- money to offset costs to the consumer for energy efficient appliances, which could be cheaper and more effective than the regulation of industry and investments in greenhouse gas controls;
- utilities capitalization for energy efficiency investments;
- smart grid/smart meter and price signaling as ways to achieve energy efficiency; and
- misinformation and scare tactics used to attack nuclear power as a greenhouse gas alternative.

Environmental Education

As discussed during the September 11, 2009 meeting in Los Alamos, Kate Massengale, Ph.D., dean of instruction at UNM-Los Alamos, and James Bearzi, NMED, asked the committee to endorse a memorial requesting support from the federal government for an environmental

education curriculum at UNM-Los Alamos.

Following up on the discussion at Los Alamos, the committee discussed:

- whether this curriculum would include both technical and academic training;
- integration with the Waste and Environmental Research Consortium;
- involvement of contractors in work force training to increase economic development;
- relationship with other campuses and post-secondary institutions; and
- U.S. Department of Energy's approach to the NMED rather than directly to UNM or other educational institutions.

The committee voted to endorse the legislation, with Representative Wallace as the primary sponsor.

Uranium Legacy Cleanup Motion

Damian Lara, staff attorney with the Legislative Council Service, summarized changes made to the proposed letters to Congress previously discussed at the September 10 meeting of the committee in Albuquerque.

The committee asked about:

- the scale of the uranium mine legacy problems;
- the status of studies by the EMNRD; and
- surveys of legacy sites.

The committee approved a motion to send the letters over the chair's signature.

Mining Safety Act

Terence Foreback, state mine inspector (SMI), asked the committee to endorse two bills. He explained that current statute delegates all authority regarding penalty for failure to provide emergency notification with the SMI. Current rules allow an appeal of the original penalty to the SMI, who then provides a final decision. The next option for an operator is district court. The proposed change would allow an appeal of the SMI decision to the Mining Safety Board (MSB). The MSB is the review board for the SMI and the rulemaking body in New Mexico for mine safety regulation. The MSB is balanced between nonmanagement and management members of the New Mexico mining community. An appeal of the SMI decision to the MSB would bring the process in line with processes already in place with other state agencies that allow appeal of agency decisions to their oversight board (for example, to the Water Quality Control Commission or to the Coal Surface Mining Commission).

He also asked for endorsement of a bill to require that coal mine officials (surface foremen, underground examiners and underground foremen) be recertified every five years and to include language requiring testing for recertification.

The committee voted to endorse the legislation, with Representative Heaton as the primary sponsor.

Dairy Industry Update

T.J. Trujillo, attorney, Beverly Fikse, with Dairy Producers of New Mexico, and Robert Hagavoort, Ph.D., with the Agricultural Science Center at Clovis, discussed issues affecting the dairy industry. They said that there are between 160 and 165 dairies in the state. These dairies own approximately 300,000 cows. Most of the dairies are in the eastern plains of the state. The dairy industry is the number one agricultural commodity in New Mexico, but most dairies are small, family-owned operations vulnerable to economic hardship. Dr. Hagavoort said that the last two years have represented a "perfect storm" for dairies. The losses on average have been $100 per cow per month, equaling $200,000 per month per dairy and $2 million per dairy per year in losses. He said that to date there have not been a lot of foreclosures and bankruptcies because the rural banks cannot afford to lose any more customers.

The dairies represent a $2.5 billion industry to the New Mexico economy, with 18,000 jobs in New Mexico tied to dairy production directly and indirectly. The presenters said that New Mexico is currently the third-largest dairy production state in the nation, behind Wisconsin and California.

The presenters testified that dairy prices are controlled by the federal government and are currently set at $9.00 per 100 gallons of milk. The average cost of production is $16.00 per 100 gallons, and payments from buyers do not reach producers for a month. The upshot, they said, is that dairies are losing equity with their revenues at 1979 levels, but their costs are at 2009 levels. Also, the European Union is increasing subsidies to its dairies while the U.S. federal government is maintaining unreasonably low prices for U.S.-produced dairy products, thus driving the dairy industry out of business in North America.

The presenters said they have two legislative priorities: to maintain favorable tax treatment and to reduce regulatory burdens. They did not have any specific bills for which they were asking the committee's endorsement.

The committee discussed:

- combined reporting of taxes;
- corporate structure of cheese factories;
- economic impacts on processors;
- regulatory reform bills endorsed by the Economic and Rural Development Committee;
- stakeholder negotiation process for negotiating rules;
- NMED's regulation of the dairy industry in ways that threaten to put it out of business;
- override of veto compared to introduction of a new bill;

- effect of greenhouse gas rules on the industry;
- potential for carbon dioxide offset credit to dairies for growing feed and recycling carbon;
- large carbon footprint of fertilizers used to grow crops; and
- inclusion of regulations in statutes, such as in California.

Office of Nuclear Worker Advocacy Act

Jim Perry and Loretta Valerio, both from the NMED, asked the committee to endorse a bill to create a fund consisting of a percentage of federal money that is to be paid to certain employees in the nuclear industry harmed by the effects of radioactivity in the course of their work. The fund would pay for advocacy services by the department.

Questions from the committee related to:

- all claimants having to pay regardless of whether they received help from the state; and
- whether there is a U.S. Department of Energy office in Espanola.

The committee voted to endorse the bill, contingent on a minor change, to be sponsored by Representative Salazar.

Storage Tank Legislation

Jim Davis, NMED, and Susan George, attorney with the Institute of Public Law, UNM School of Law, requested the committee's endorsement of a bill similar to last year's legislation to bring New Mexico storage tank law into compliance with federal law. Mr. Davis and Mr. George said the content of the bill will:

- add authority for delivery prohibition (required by the federal Energy Policy Act of 2005);
- eliminate exemption for emergency generator tanks (which conflicts with federal law); and
- conform language for heating oil tank exemption to federal law (and expand exemption to reduce the number of heating oil tanks regulated as required by federal law).

They said that the bill addresses only tanks with substantial violations of technical and safety requirements (not for minor violations). The policy will be a facility-by-facility approach, not tank-by-tank. It includes provisions for shutting down a facility until violations are corrected. They testified that to date, approximately 30 states/territories have a red tag program, 13 states/territories have a green tag program, 14 states/territories have no red or green tag program and two states have another type of program. They explained why a red tag program is better than a green tag program.

The committee discussed:

- a duplicate of last year's bill;
- support of industry;
- impacts in intervening time;
- pressure from the EPA;
- response to the federal Energy Policy Act of 2005;
- the EPA's delivery prohibition authority;
- comparison of green tag and red tag programs; and
- the need for a letter from industry to every standing committee in support of the bill.

The committee voted to endorse the bill with Senator Leavell as its primary sponsor.

Air Quality–Bad Actor Bill

Mary Uhl, NMED, and Seth Cohen, Office of the Attorney General, told the committee that not enacting this bill would allow bad actors to enter the state. The bill would amend the Air Quality Control Act to allow the NMED to deny or condition an air quality permit and modify, suspend or revoke an existing air quality permit if the permit applicant has:

- knowingly misrepresented facts in the application for a permit;
- refused or failed to disclose the information required under the provisions of the Air Quality Control Act;
- been convicted in any court within the past 10 years of a felony related to environmental crime or a crime defined as involving restraint of trade, price-fixing, bribery or fraud;
- exhibited a history of willful disregard for environmental laws;
- had any permit revoked or permanently suspended under environmental laws; or
- received two notices of violations for anything at any time.

Mr. Rose told the committee that the proposed bill copies language from the Solid Waste Act, which was written the way it is in large part to stop organized crime from coming into New Mexico when organized crime was involved in waste disposal in the 1980s when the law was enacted. Subsequently, changes were made to the Mining Act that reflect the Solid Waste Act language, and since the Mining Act enactment, no new mines have been permitted in New Mexico. Mr. Rose said that the language is overkill. He said that industry is not confident in the agency's exercise of its discretion. This change in the law would have a chilling effect on legitimate business, he testified.

The committee discussed:

- Marathon Oil Company's departure from the state;
- definition of "willful disregard";
- the low threshold of two notices of violation as a criteria for denying or rescinding

permits;
- the enmity between the NMED and the regulated community and lack of constructive communication;
- a direct request for the department and industry to work better with each other and to develop a negotiated bill;
- local jurisdiction;
- non-attainment areas from dust and coal-powered generation plants; and
- lack of jurisdiction.

No action was taken on the bill.

New Mexico's Energy Economy, New Mexico First Town Hall Report

Jennifer Salisbury, chair of New Mexico First's Energy Implementation Committee, summarized the town hall process of New Mexico First and the Growing New Mexico's Energy Economy town hall report. The overriding objective of the town hall on energy is to create a diversified, innovative and resilient statewide energy system that supports long-term economic development for all areas in the state by capitalizing on New Mexico's inherent energy resources. The goal is to create a unifying energy strategy for New Mexico that will enhance and diversify economic development; tie together all related agencies and programs, energy sources and infrastructure; and provide a framework for coordinated plans from each stakeholder, Ms. Salisbury told the committee. The participants at the town hall were eager to promote work force education and business models that incorporate new technologies, renewable energy, energy efficiency, conservation, public health, appropriate siting, environmental impact reduction and consumer choice. Town hall participants also felt that New Mexico must maximize its strengths in the development and supply of energy, both for export and internal consumption, while fostering social and geographic equity and opportunity. State policy should optimize a mix of incentives and financial instruments (private activity bonds, corporate bonds, equity, etc.) to implement the energy strategy on local and state scales, including both centralized and distributed approaches. It was felt that the first step should be development of a detailed 20-year plan outlining the use, generation and export of energy (both liquid fuels and electricity) from all possible energy sources might:

- show how to diversify the economy and tax base to ensure the prosperity of New Mexicans in a wide range of possible futures (e.g., different energy price trends, different carbon pricing assumptions, different commodity prices, water availability, different federal scenarios and healthy communities);
- provide a road map for regulatory reform and policy integration across state government, including different departments and the PRC;
- have buy-in from a wide range of stakeholders, including those traditionally not well represented;
- employ advanced analysis, including full life-cycle costing, to estimate the full range of impacts under different scenarios (e.g., tax revenue; job creation; investment costs; health costs and returns on investment; and impacts on electric rate payers, including

low and limited-income households);
- address energy efficiency and conservation opportunities;
- consider how to create lasting jobs throughout the energy field;
- show how the proposed policies align with other state goals (e.g., environmental conservation, education, tourism, water quality, health, aesthetics and culture); and
- outline implications in all areas of public policy, including land-use policies and building codes, as they relate to energy use, generation and transmission.

The committee adjourned at 11:30 a.m.